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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,543	09/12/2003	David C. Fischer		6417

7590

02/16/2005

Marvin N. Gordon
277 West End Avenue
New York, NY 10023

EXAMINER

COURSON, TANIA C

ART UNIT PAPER NUMBER

2859

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,543

Applicant(s)

FISCHER, DAVID C.

Examiner

Tania C. Courson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October, 2004 & 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-13, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

I. The species shown in Figure 1.

II. The species shown in Figure 2.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 17 appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Marvin Gordon on February 10, 2005, a provisional election was made without traverse to prosecute the invention of the species found in Figure 1, which reads upon claims 1-5, 8-13 and 16-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-7 and 14-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

3. Claims 1-5, 8-13 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Stenger et al (US 6,165,083).

Stenger et al. disclose in Figure 4, an position detecting aid and associated method comprising:

With respect to claims 1-5, 8-14 and 16:

- a) a member (115) movable along a path corresponding to the position of the object (Fig. 4), a plurality of spaced electrical contacts insulated from one another and positioned along said path (116a & 118a), means operatively connected to said plurality of contacts for storing a corresponding plurality of preset position measurement data at a corresponding plurality of memory

locations (column 5, lines 45-60), each of said position measurement data stored respectively in said plurality of memory locations being respectively associated with one of said plurality of contacts along said path (column 5, lines 45-60), and output means operatively connected to said data storing means (121), said movable member being effective when in engagement with said one of said contacts to cause the data stored in the one of said memory locations operatively connected to said one of said contacts to be applied to said output means (column 5, lines 45-60);

- b) in which said output means is a display device (121);
- c) in which said output means is a CPU (column 5, lines 60-66);
- d) in which said contacts are arranged in an arcuate path (Fig. 4);
- e) in which said movable member is connected at one of its ends to a voltage source (column 4, lines 54-66) and its other free end is movable along said arcuate path to make electrical contact with one of said contacts (Fig. 4)
- f) in which said data-storing means is a ROM (110);
- g) further comprising a voltage source (column 4, lines 54-66), said member being effective when in electrical engagement with one of said contacts to place an associated one of said memory locations in a circuit arrangement with said voltage source (column 4, lines 54-66).

With respect to method steps of claim 17:

- a) arranging a plurality of fixed, spaced and insulated electrical contacts along a path (116a & 118a), moving a member (115) along said path by an amount representative of the relative movement of the object (Fig. 4), thereby causing said movable member to make electrical contact with one of said contacts (Fig. 4), storing respectively a corresponding plurality of preset position data in a plurality of data-storing locations being respectively associated with one of said plurality of contacts (column 5, lines 45-60) and causing the position data stored in the one of said data-storing locations associated with the said one of said plurality of contacts then contacted by said movable member to be applied to an output device (column 5, lines 45-60).

Response to Arguments

4. Applicant's arguments filed on November 8, 2004 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a measuring device:

Jordil (US 2003/0128028)

Arlinsky (US 6,658,755 B2)

Walters (US 6,279,248 B1)

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Comeau et al. (US 4,493,155)

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

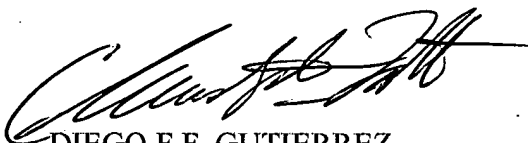
The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
February 11, 2005

CHRISTOPHER W. FULTON
PRIMARY EXAMINER